

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

**Joint Agenda and Report for
January 19, 2017 Status Conference**

Pursuant to Pretrial Order #3, undersigned Counsel submit this Joint Agenda and Status Conference Report for the January 19, 2017, 9:30 a.m. Status Conference:

1. Joint Request to Appear Telephonically

The parties met and conferred on Friday, January 13, 2016, and jointly request that the Court consider holding the January Status Conference by telephone on either Wednesday, January 18, or Thursday, January 19, in lieu of the in-person conference scheduled for 9:30 a.m. on January 19. The parties believe that the issues on this month's agenda – including joint requests for brief extensions of the January 20, 2017, deadline to nominate bellwether cases (as discussed in section 4., below) and the January 20, 2017, deadline for 3M to produce documents discussed during the December 15, 2017, Status Conference (as discussed in section 10., below) – can be addressed in a relatively short call with the Court. The parties are otherwise working together cooperatively to address bellwether and discovery-related issues.

2. Pretrial Orders

On January 5, 2017, the Court issued an Amended Scheduling Order, PTO #17. PTO #17 supersedes PTO #13 (Amended Scheduling Order) and PTO #15 (Bellwether Trial Selection Process).

On January 6, 2017 the Court entered PTO #17 (renumbered #18): Special Protective Order re: Augustine

3. Plaintiff Fact Sheets (“PFSs”)

The parties reached agreement on the form PFS and the proposed order governing the form and services of PFSs. On September 27, 2016, the Court entered PTO #14: Plaintiff Fact Sheet and Service Protocol. For all cases on file in MDL 2666 on September 27, 2016, a completed PFS was due no later than December 26, 2016. On December 21, 2016 the Court entered PTO #16: Plaintiff Fact Sheet Service Order. All PFS submissions are being uploaded to a secure FTP hosted by Elijah and deficiency notices shall be served electronically upon co-lead counsel within four weeks of receipt of a PFS.

As of Thursday, January 12, PFSs for 810 cases were due; PFSs for 730 had been received by Defendants. Of the PFSs received, Defendants are in the process of reviewing them and believe there are deficiencies that need to be addressed by a number of plaintiffs. These will be addressed in the manner prescribed by PTO #14. In addition, there are approximately 70-75 cases where a PFS was due and no PFS has been submitted. Defendants and Plaintiffs’ liaison counsel have been meeting and conferring on the overdue PFSs. Defendants intend to seek Court action for cases in which a PFS

was due but not received by Friday, January 13, and an extension was not granted by Defendants. Defendants are also working with Plaintiffs' liaison counsel to address the need for Defendants' agreement on stipulations for dismissal with prejudice. The parties propose to report back to the Court on any such issues that have not been resolved by the February 16 Status Conference.

4. Bellwether Selection Plan

PTO #17 details the bellwether trial selection process. On January 9, the parties submitted their joint and also separate proposals, of the relevant characteristics and categories to be considered in assessing whether a case is representative of the range of cases in this action.

On January 5, 2016 the Court randomly selected 150 cases from the bellwether pool that includes case filed in, removed to, or transferred to this MDL on or before December 19, 2016. Of those 150 cases randomly selected by the Court, two have been dismissed with prejudice and one case (*Delago*) is being excluded from the group of 150 because Defendants have granted a 30-day extension of time for completion of a PFS due to the death of Plaintiff Delago. Of the remaining 147 cases in the random selection pool, PFSs have been received in over two-thirds of the cases; no PFSs have been submitted in fewer than 10 cases. For the remaining cases, a PFS is not yet due given that the bellwether pool included cases filed up through December 19, 2016, and PFSs are not due until 90 days after filing.

PTO #17 includes a January 20, 2017, deadline for the parties to each select 16 Nominated Cases. The Parties jointly request an additional 11 days, to January 31, to

allow them to work through the issues relating to the PFSs so that they can each nominate the 16 cases as required by PTO #17.

5. Foreign Discovery

The parties conducted an additional third-party study author deposition in the United Kingdom -- of Dr. Paul McGovern -- on January 4 and 5, 2017. No other foreign depositions are scheduled at this time.

6. Update on number and status of cases transferred into the MDL

As of Friday, January 6, 2017, there were 1111 active federal Bair Hugger cases pending in this MDL. Not all of these filed cases have been served on Defendants.

Update on cases filed in the City of St. Louis, Missouri

Two cases are pending transfer to this MDL from the Eastern District of Missouri, *Jennings, et al. v. 3M & Arizant Healthcare, Inc.*, and *Weisbrod et al. v. 3M and Arizant Healthcare, Inc.* The *Jennings* and *Weisbrod* matters were both filed in the City of St. Louis, Missouri state court. The *Jennings* matter joins the Bair Hugger claims of 52 plaintiffs, only one of whom is from Minnesota. The *Weisbrod* matter joins the Bair Hugger claims of 58 plaintiffs, only three of whom are from Minnesota. Plaintiffs' counsel in both cases is Anthony Simon of The Simon Law Firm, P.C. Defendants removed these actions to the E.D. Mo. on January 5 and 6, respectively, based on improper joinder of the non-Missouri plaintiffs, including the plaintiffs from Minnesota, in (Defendants' view) an apparent attempt to destroy complete diversity and make an end-run around transfer to this MDL. Defendants contemporaneously filed motions to dismiss for lack of personal jurisdiction over the non-Missouri Plaintiffs pursuant to Rule

12(b)(2) of the Federal Rules of Civil Procedure, or in the alternative, to sever the multi-plaintiff lawsuit for improper joinder under Rules 20 and 21, along with motions to stay in the E.D. Mo. so that the pending motion to dismiss or to sever can be decided by this Court. No district court judge has been assigned in either *Jennings* or *Weisbrod*. On January 6, Defendants filed a Notice of Potential Tag-Along Actions with the JPML for these two matters. On January 10, 2017, the JPML entered its conditional transfer order. The *Jennings* and *Weisbrod* plaintiffs have until January 17, 2017, to file an opposition to transfer to the MDL. If no opposition is filed, transfer of these matters to the MDL will be complete next week.

7. Overview of related state court proceedings

There are 47 cases pending before Judge Leary in Ramsey County. Judge Leary has indicated that he intends to coordinate the Ramsey County cases with this MDL and has suspended status conferences until further notice.

This Court has ordered that the Ramsey County cases are to be included within the bellwether selection process. On December 29, 2016, the Ramsey County Court entered a PFS order for Ramsey Cases. For all Ramsey cases pending as of the date of the Order, a completed PFS is due no later than January 31, 2017. As acknowledged on December 15, 2016 Status Conference, deadlines in PTO #17 that relate to the Ramsey County cases need to be adjusted in light of the January 31 due date for Ramsey County PFSs. The parties have met and conferred and propose that this Court allow each party to designate up to 2 Ramsey County cases (as set out in paragraph 12.c. of PTO #17) no later than February 13, 2017.

There are currently four state court cases pending outside of Ramsey County, Minnesota:

- *Rodriguez v. 3M Co., Arizant Healthcare, Advocate Health and Hospitals Corporation, and Medtronic Sofamor Danek U.S.A., Inc.*, pending in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, Case No. 15-L-930, before the Honorable Thomas J. Schippers. Plaintiffs are represented by DeSanto Morgan & Taylor. The *Rodriguez* case was filed on December 31, 2015 and 3M and Arizant were served on January 14, 2016. At the November 30, 2016 case management conference, the Court tentatively set a trial date of March 5, 2018 with the aim of trailing the first MDL bellwether trial. No discovery schedule has been set; another case management conference has been set for February 22, 2017 to set a schedule. Defendants intend to seek a further continuance of the trial date in light of the adjustment to the MDL bellwether trial date.
- *Lawson v. 3M Co., Arizant Healthcare, Inc., CHCA Conroe L.P., Conroe Hospital Corporation, Conroe Regional Medical Center, and Haissam Elzaim, M.D.*, pending in the 284th Judicial District Court, Montgomery County, Texas, before the Honorable Cara Wood. Plaintiffs are represented by the Hopkins Law Firm. The *Lawson* case was filed on October 7, 2015. 3M was served on October 28, 2015 and Arizant was served on November 13, 2015. A status conference is set for November 19, 2017, at which time a trial date will be set. The *Lawson* judge selected the November 2017 date in order to see whether the first MDL bellwether

case had proceeded to trial as had been scheduled. The deposition of one of the plaintiffs and the defendant treating physician occurred in September 2016. The deposition of the other plaintiff, the defendant hospital, and 3M's sales representative are not yet scheduled.

- *Acosta v. 3M and Arizant Healthcare, Inc.*, pending in the Fourth Judicial District Court, Missoula County, Montana, Case No. DV-16-769, Dept. No. 4, Plaintiffs are represented by the Rossbach Law Firm. The *Acosta* case was filed on September 9, 2016. 3M and Arizant have not been served.
- *Petitta v. Ray R. Trey Fulp III et al.*, pending in the District Court of Hidalgo County, Texas. Plaintiff is represented by the Garcia & Martinez Law Firm. The *Petitta* case was filed on November 14, 2016. This case was duplicative (same plaintiff, same allegations against 3M) of a case previously filed in the MDL (Case No. 16-cv-03878). 3M was served on November 18, 2016. Plaintiffs' counsel has advised 3M that the state court action will proceed. Defendants' response to the complaint is due January 20, 2017.

8. Overview of Canadian Action

On June 22, 2016, Defendants were served with a Canadian putative class action, *Driessen v. 3M Canada Company, 3M Company, and Arizant Healthcare Inc.*, filed in Ontario Superior Court of Justice, Court File No. 16-69039. Plaintiff *Driessen* seeks to represent a putative class of “[a]ll persons residing in Canada who had the 3M Bair Hugger Forced-Air Warming Device used on them during surgery.” (*Driessen* Cplt. at ¶ 4.) Plaintiff *Driessen* is represented by Jeff Orenstein and Andrea Grass of the Consumer

Law Group Professional Corporation in Ottawa, Ontario. Defendants have retained Canadian counsel, Tim Buckley and Kate Crawford of Borden Ladner Gervais. On August 8, 2016, Defendants filed their Notice of Intent to Defend. On October 24, 2016 the plaintiff's counsel requested a judge assignment and case conference. There has been no additional case activity since the time of the last Joint Status Report.

9. Additional pretrial orders (including, but not limited to, rules and procedures, preservation order, and protective order of confidentiality)

There are no additional pretrial orders pending and the parties do not request entry of any additional pretrial orders at this time.

10. Status of Discovery

Augustine. The Court granted Defendants' Motion to Compel Third-Party Augustine Entities to Produce Documents in Response to Subpoenas in part on November 23, setting deadlines of December 13 and 20 for Dr. Augustine and his entities (together, "Augustine") to provide certain sworn statements and produce additional documents, respectively. On December 12, Augustine submitted a sworn statement concerning the attorney-client or litigation consultant relationship with the Kennedy Hodges law firm. On December 20, Augustine produced 6,500 additional documents responsive to Defendants' requests, and on December 22, Augustine submitted an additional privilege log. The parties agreed with Augustine on a special protective order to address Augustine's confidentiality concerns, which has been entered by the Court as PTO #18.

Defendants postponed Dr. Augustine's deposition from the previously set date of January 9, 2017 based on their determination that they needed more time to evaluate the completeness of Augustine's supplemental document production and the sufficiency of the new sworn statements. Defendants anticipate further motion practice concerning Dr. Augustine's compliance with the November 23 order.

Completion of Defendants' email production. Defendants have been making rolling productions of email and have presented a plan to Plaintiffs to complete the production of remaining email by January 31. Plaintiffs have agreed to that date so long as Defendants continue to make regular rolling productions. The Parties jointly request that the Court allow 3M from January 20 until January 31 to complete document production for the pending requests that were the subject of discussion at the December 15, 2016 status conference (*see* PTO #17, paragraph 9.)

Deposition update. Plaintiffs have requested depositions of current or former employees of the Defendants, which have been completed or scheduled as follows:

- Gary Hansen, completed November 2;
- John Rock, completed November 4;
- Al Van Duren, completed November 7;
- Troy Bergstrom, completed November 18;
- Caroline Johnson, completed November 30;
- Teri Woodwick-Sides, completed December 8;
- Jana Stender, completed December 9;

- David Westlin, completed December 16;
- Dr. Michelle Hulse-Stevens, completed December 19;
- Dr. Daniel Sessler, completed January 11;
- Dr. Andrea Kurz, complete January 12;
- Gary Maharaj, noticed for January 18;
- Jay Issa, noticed for February 8 (possibly being continued);
- Karl Zgoda, noticed for February 24;
- Ryan Barrows, noticed for February 28;
- Mark Scott, noticed for March 2;
- Bob Buehler, noticed for March 17.

Plaintiffs have also requested that the depositions of Hamid Ziaimehr and Winston Tan to occur before the March 20 general causation fact discovery cutoff.

Plaintiffs also served Rule 30(b)(6) deposition (deposition to be scheduled at a time mutually convenient for the parties). Defendants plan to serve objections to the Rule 30(b)(6) deposition notice during the week of January 16. The parties will subsequently meet and confer on scope, and work together to find dates for the deposition(s) in advance of the March 20, 2016 fact discovery deadline on issues of general causation.

In addition to the UK study author depositions described above, Defendants have conducted the following U.S. study author depositions:

- Dr. Kumar Belani, completed September 7;

- Mark Litchy, completed September 28;
- Dr. Robert Gauthier, day 1 completed October 4 and day 2 completed December 15;
- Mark Albrecht, day 1 completed October 7 and day 2 completed November 12; and
- Christopher Nachtsheim, completed November 29.

As noted above, Defendants intend to reschedule Dr. Scott Augustine's deposition.

The parties have also met and conferred on whether there should be a limitation placed on the number of fact witness depositions allowed each party. The parties agree this issue is not ripe for consideration by the Court and will continue to meet and confer as the fact witness depositions proceed.

Dated: January 13, 2017

Respectfully submitted,

Jerry W. Blackwell (MN #186867)
Mary S. Young (MN #0392781)
Benjamin W. Hulse (MN #0390952)
BLACKWELL BURKE P.A.
431 South Seventh Street
Suite 2500
Minneapolis, MN 55415
Phone: (612) 343-3256
Fax: (612) 343-3205
Email: blackwell@blackwellburke.com
myoung@blackwellburke.com
bhulse@blackwellburke.com

Bridget M. Ahmann (MN #016611x)
M. Joseph Winebrenner (MN #0387889)
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
Email: bridget.ahmann@faegrebd.com
joe.winebrenner@faegrebd.com

**Counsel for Defendants 3M Company
and Arizant Healthcare, Inc.**

Michael V. Ciresi (MN #0016949)
Jan M. Conlin (MN #0192697)
CIRESI CONLIN LLP
225 S. 6th St., Suite 4600
Minneapolis, MN 55402
Phone: 612.361.8202
Email: MVC@CiresiConlin.com
JMC@CiresiConlin.com

Ben W. Gordon, Jr. (*Pro Hac Vice*)
LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY & PROCTOR, P.A.
316 South Baylen Street, Suite 600
Pensacola, FL 32502-5996
Phone: (850) 435-7091
Fax: (850) 435-7020
Email: bgordon@levinlaw.com

Genevieve M. Zimmerman (MN #330292)
MESHBESHER & SPENCE, LTD.
1616 Park Avenue South
Minneapolis, MN 55404
Phone: (612) 339-9121
Fax: (612) 339-9188
Email: gzimmerman@meshbeshesher.com

Co-Lead Counsel for Plaintiffs